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C O N F I D E N T I A L SECTION 01 OF 02 KABUL 001860

SENSITIVE  
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TAGS: [PGOV](#) [AF](#) [PREL](#) [PHUM](#) [KDEM](#)  
SUBJECT: REVISED SHIA LAW: NOT THE BEST BUT THE BEST NOW  
POSSIBLE

REF: A. ROBINSON-TIMBERLAKE EMAILS  
[1](#)B. REVISED LAW TRANSLATION  
[1](#)C. KABUL 1773

Classified By: Deputy Ambassador Ricciardone for reasons 1.4 (b) and (d)  
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[1](#)1. (C) President Karzai's chief of staff (strictly protect) told the Embassy July 12 that President Karzai signed a decree July 11 enacting the revised Shia Family Law and ordered the Ministry of Justice (MOJ) to publish it as soon as possible, using his authority under Article 79 of the Constitution. The official also said that Karzai has instructed all Palace and MOJ officials to avoid commenting publicly on the law's imminent publication; Embassy officers confirmed this development with MOJ. Karzai believes a quick and quiet publication of the law may forestall or lessen protests from civil society, the international community, and religious fundamentalists, the Palace official noted. Foreign Minister Spanta also confirmed to us on July 13 that Karzai had opted, over Spanta's advice, to move the law forward to publication. However, other government officials believe that Karzai may opt not to enact the law by decree, but rather, allow the revised law to go through the normal parliamentary approval process, pushing back enactment and publication to at least September, after Parliament reconvenes.

[1](#)2. (C) Under the constitution, Parliament has the authority to review any law passed by presidential decree. It is unlikely, however, they will exercise their review power due both to general lack of capacity (they are currently reviewing decrees from 2005) and trepidation about the massive, sensitive debate a parliamentary review of the law would spark. In fact, there is a serious question as to whether Parliament will hold another session before the August 20 election.

[1](#)3. (C) FM Spanta and key civil society representatives independently told us that the law contains many positive changes but still has some problematic articles. They differ among themselves, however, on their thoughts about the course ahead. Some women's rights leaders are poised to push publicly for additional changes, while the Afghan Independent Human Rights Commission (AIHRC) Chair Sima Samar believes the law as modified reached the limit of what Afghan society will currently accept. Samar told us July 12 that she had counseled other human rights activists to allow the law to go forward, because the revisions are a true victory and they can make further changes in the future. She also told us that this is that this is what she would say publicly and she recommended that a similar line by the USG would best support her future efforts on the issue. Spanta, who had publicly and actively opposed the original law, told the Deputy Ambassador July 13 that after consulting with Samar and other colleagues in civil society, he decided to support the law when it was under Cabinet review July 8. "We should recognize the reality of the country, the power of the mullahs, and the fact of elections in six weeks," he noted.

¶4. (SBU) We judge that the revised law is a meaningful step in the right direction; however, several provisions continue to conflict with women's constitutional right to equality. On the positive side, MOJ deleted several articles contemplating underage marriage and conditioning payment of the dowry on sexual penetration. MOJ also deleted clauses of articles providing "it is t enjoyment" and requiring a wife to apply makeup if requested by her husband. Some of the remaining problematic clauses include article 133, which still conditions a woman's right to continue working after marriage on the husband and wife including this term into the marriage contract; it de facto does not protect her right to start working after marriage or continue a job that wasn't specified in the contract. Similarly, the reviewers revised the language relating to freedom to leave the house--the default is now that women may leave. However, the article allows for abrogation of this right for either a husband or a wife if a court confirms leaving the home to be in contradiction with Sharia law. The new version deleted some highly inflammatory language from article 177 (now article 173) discussing a women's duty to sexually satisfy her husband but left unmodified one clause which allows a husband to withhold support (food and shelter) from his wife if she fails to perform "legal and sharia-approved marital obligations." (Samar somewhat optimistically argued this could mean that the civil law and constitutional protections for women apply.) Finally, the revised text still contains discriminatory divorce and inheritance provisions. FM Spanta admitted that his daughter would continue to chide him for serving in a government that promulgates such a law, and he

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vowed to continue to press for changes in the future.

¶5. (C) Comment: This law, like the recent Media Law, is clearly flawed, but it is likely the best version that Afghan democracy can produce for now -- because conservative members of parliament and society are livid at the changes and waiting for a chance to push back. We will recommend the USG respond to media inquiries by citing the views of Afghan civil society leaders, to the effect that the draft in their view represents a great step forward but still leaves much work to do in order to protect the equality of all Afghans. We will continue to press Karzai or his successor for further modifications of the law, in our continued close coordination with Afghan human rights activists and reformers in government and civil society.  
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